

REPLY

Examiner Interview

The applicant thanks the Examiner for extending the courtesy of a telephonic interview with the applicant's representative, Jennifer Zanoocco, on February 19, 2009. The election of group 10 was discussed. The applicant's representative asserted that group 10 had been elected and that all of the pending claims read on group 10. The Examiner disagrees, finding that certain claims, such as claim 18, do not read on group 10. The applicant's representative agreed to respond to the outstanding notice of non-compliance and traverse the restriction.

The Claims

The claims are merely included above for the Examiner's convenience. No further amendments are made to the claims at this time.

The Notice of Non-compliance

The Examiner has found that the response filed on October 23, 2008, was not fully responsive to the prior Office Action because the submission allegedly did not elect group 10 from the restriction requirement. The applicant respectfully disagrees.

Group 10, which is drawn to a plastic recycling process including triboelectrostatic separation is elected. All of the pending claims read on group 10.

The applicant elected claim 10 without traverse in the interest of expediency. In light of the Examiner's refusal of accepting the election, the applicant traverses. The applicant traverses (1) the basis for the restriction and (2) the Examiner's finding that not all of the claims read on group 10.

This application is a national stage application of a PCT application, having been filed under 35 U.S.C. 371. Thus, any restriction of the claims is handled under PCT rules (see MPEP 1893.03(d)). The applicant understands that the Examiner does not disagree with this point. However, the applicant submits that the basis for the restriction is not supported by the rules relied upon by the Examiner. The office action mailed July 11, 2008, on page 2 states that the restriction is based on groups of inventions.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

The applicant points out that the PCT rules use unity of invention as the basis for restriction. This is supported by the rule relied upon by the Examiner, 37 CFR § 1.499, which states the following.

§1.499 Unity of invention during the national stage.

If the examiner find that a national stage application lacks unity of invention under § 1.475, the examiner may in an Office action require the applicant in the response to that action to elect the invention to which the claims shall be restricted.

37 CFR § 1.475 (in part) states the following.

§1.475 Unity of invention before the International Searching Authority, the International Preliminary Examining Authority and during the national stage.

(a) An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

...

(e) The determination whether a group of inventions is so linked as to form a single general inventive concept shall be made without regard to whether the inventions are claimed in separate claims or as alternatives within a single claim. (emphasis added)

The applicant submits that at least one special technical feature required by the claims is a sequence of processes that includes a surface to mass control process (c) followed by a separation process enhanced by the narrow surface to mass distribution (d). Because all of the claims require this sequence of steps, the applicant submits that the claims have unity of invention. Because the claims all have unity, the restriction is improper.

Moreover, the Examiner misapplies the special technical feature standard. Specifically, the Examiner confuses "classification" with "special technical feature". This confusion has

resulted in the groups the Examiner identified in the office action of July 11, 2008. Because the groups are based on a classification rather than any special technical features, the groups are based on an improper standard.


Assuming *arguendo* that the restriction was proper, the Examiner argues that only claims 15, 45-53, 57, 59 and 60 read on group 10. However, triboelectrostatic separation is a type of electrostatic sorting, which is a separation process that is enhanced by narrow surface to mass distribution. Claim 15 requires a separation process that is enhanced by narrow surface to mass distribution and is the only independent claim. All of the dependent claims require a separation process that is enhanced by narrow surface to mass distribution. Some of the dependent claims, such as claim 47 call out the separation process that is enhanced by narrow surface to mass distribution as being triboelectrostatic separation. However, none of the claims *exclude* triboelectrostatic separation from being the separation process that is enhanced by narrow surface to mass distribution. Thus, all of the claims read on group 10.

No fee is believed to be due. If, however, there are any charges or credits, please apply them to Deposit Account No. 06-1050.

Respectfully submitted,

Date:

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